

THE BRAD SOHN LAW FIRM, PLLC

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IN THE CIRCUIT COURT OF THE 9TH
JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 2018-CA-012128-O

SHARRIF K. FLOYD

Plaintiff,

VS.

DR. JAMES ANDREWS, M.D.; DR. GREGORY
HICKMAN, M.D.; DR. CHRISTOPHER WARRELL,
M.D.; DR. TARIQ HENDAWI, M.D.; THE ANDREWS
INSTITUTE AMBULATORY SURGERY CENTER,
LLC; PARADIGM ANESTHESIA, P.A.; BAPTIST
HOSPITAL, INC.; BAPTIST HEALTH CARE
CORPORATION; GULF BREEZE HOSPITAL, INC.,
BAPTIST HOSPITAL, INC. d/b/a GULF BREEZE
HOSPITAL; AND BAPTIST PHYSICIAN GROUP, LLC,

Defendants.

**PLAINTIFF'S OMNIBUS MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTIONS TO TRANSFER VENUE ON *FORUM NON-CONVENIENS* GROUNDS**

Plaintiff Sharrif Floyd respectfully submits this omnibus Memorandum in Opposition to Defendants Motions to Transfer Venue on *forum non-conveniens* grounds, stating as follows:

PRELIMINARY STATEMENT

The Defendants, who concede (as they must) that venue properly lies here in Orlando, present three Motions seeking transfer to the panhandle; all, therefore only on grounds of *forum non-conveniens*. See Fla. Stat. § 47.122. This means the Court can only veto Plaintiff's presumptively valid choice if it finds Defendants' burden satisfied; they would need to demonstrate Orlando as having created a *substantial inconvenience* to parties and witnesses, and as specifically

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compared to Defendants’ proposed panhandle venue: the First Judicial Circuit. But they have shown no such thing. Each Defendant—including one who lives and works right here in Orlando—clearly views Orlando as a *less preferable* alternative; but none come close to showing how Orlando—one of the most centrally-located spots on the map for this nationally-flavored case—materially inconveniences them *at all*. Much less in ways the panhandle would not do equally. The Court must therefore deny these motions, and on similar grounds that it did just last month. *See Blanco et al v. G4S Secure Solutions (USA) INC.*, No. 2018-CA-006288-O, Order Denying Defendant’s Motion to Change Venue, (Fla. 9th Cir. Ct. Dec. 19, 2018).

A. The Litigation, Parties, and Material Witnesses

The Plaintiff, Sharrif Floyd had been playing professional football in Minneapolis for the Vikings. In Florida, in 2016, the named surgeons purported to jointly microfracture him¹, with the named anesthesiologist then performing a nerve block thereafter. Mr. Floyd alleges the foregoing resulted in his suffering a nerve injury. *See Sohn Affid.* In Colorado, in December of 2016, a follow-up examination with two world-renowned orthopedists at Vail’s Steadman Clinic led to the discovery of this block-mediated injury. It proved career-ending after myriad studies and follow-up consultations literally occurring across the entire United States: at HSS in New York; at Mayo; and elsewhere. Mr. Floyd has lost out on a career where similarly-situated colleagues presently earn in excess of \$22.5M/year. *See id.* So he filed the instant suit.

Mr. Floyd resides in Philadelphia, Pennsylvania. The constellation of Defendant physicians he alleges to have acted negligently reside: (1) right here in Orlando; (2) in the panhandle; (3) in

¹ Defendants attempt to alchemize a narrative that Dr. Warrell is—in reality—some sort of nominal Defendant / collateral damage. Not so. Dr. Warrell’s own Operative Report (*see Sohn Affid.*, Ex. “A” at 2) undercuts this position. This Orlando Defendant figures to be central to the case.

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Texas; and (4) upon information and belief, in Alabama. It is correct that the corporate defendants reside in the panhandle (Escambia and Santa Rosa Counties) and that the surgery also took place there, just as Defendants agree (and must) that it is correct that venue lies properly in all of these counties. **That of course includes this county, where the very surgeon resides who signed and dictated an operative report describing his own micro-fracture procedure: Dr. Warrell.**

In a case like this, the material witnesses promise to be numerous because the legal and factual questions promise to be so as well. And here, material witnesses literally reside all over the country. *See Sohn Affid.* For sure, a healthy chunk of these persons and documents will be discovered to exist in the panhandle. But far from everyone. In fact, panhandle witnesses represent probably 1/3 of this litigation, one we anticipate being vigorously defended and prosecuted.

Our affidavit (*see id.*) has undertaken to preliminarily identify scores of such persons with knowledge, the vast majority of whom would almost necessarily be viewed as material witnesses by either side. This includes 6-12 witnesses in Minnesota (from a pool of more), largely connected to the Vikings; it includes approximately 10 witnesses scattered around the northeast (from New York to Philadelphia, including the Plaintiff, medical treaters, and other key fact witnesses); it includes the Defendants and their corporate representatives (residing in Florida, Texas, and Alabama); and it includes several other medical treaters who reside in South Florida, among other place. Finally, although we recognize that expert witnesses expressly do not fall within a Court's convenience analysis, because malpractice cases are deemed a "battle of the experts", we believe it worth noting that both sides' pre-suit affiants also reside elsewhere: in California; in Tennessee, and in North Carolina. Along those lines, lead plaintiff's counsel practices in Miami (one firm), and counsel for Defendants practice in Tallahassee (two firms) and Pensacola (one firm.)

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Under Florida Rule of Civil Procedure 1.410(e)(2), Plaintiffs expect to depose all witnesses in their respective counties of residence or business, subject to various parties preferences. That means Dr. Warrell's deposition could occur here in Orlando; Dr. Hendawi's in Texas; Dr. Andrews (who has a national practice and wears many hats for the purposes of this case), to occur likely over multiple days, could take place wherever is most easily accomplished in light of his unusually difficult national travel schedule; Dr. Hickman's and the various hospital-defendant corporate representatives would almost certainly occur in the panhandle. The remaining dozens of depositions would of course occur in locations dispersed throughout the United States.

By the math, it is no less than 99.6% likely that the sum-total inconvenience to any party or witness would take the form of that individual's deposition and related discovery obligations; that is, only .4% of 9th Judicial Circuit cases are proceeding to trial; and only .2% of 1st Judicial Circuit cases are proceeding to trial. *See Sohn Aff.* Only through that highly-statistically-unlikely occurrence could one understand *any* additional inconvenience to *anyone*, and without anything exotic to a specific trial location. Even with that said, having an Orlando trial (versus a Pensacola trial) *affirmatively conveniences* most of the parties, witnesses, and counsel. To the extent an Orlando venue created inconvenience—for anyone—this seemingly would take the limited form of forcing a limited handful of people's travel from Pensacola over to Orlando. But doing so of course would conserve resources for the remaining (majority of) parties, witnesses, and counsel in the case. Those people will have a substantially easier time in Plaintiff's chosen Orlando venue.

B. Plaintiff Chose What Is Possibly the *Only* Convenient Forum

There is simply no courthouse more readily accessible to more parties, witnesses, and their counsel than Orlando's Ninth Judicial Circuit Court. More flights go in and out of Orlando's airport than nearly any other in the state. *See id.* By contrast, Defense counsel, located largely in

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Tallahassee, would not even have a non-stop flight available to get them to Pensacola at all. Nor would the majority of parties needing to travel to Pensacola (leaving aside that the panhandle Defendants have James Andrews's private jet at their disposal) have such a benefit. Nor would the majority of witnesses needing to travel to Pensacola have such a benefit. Very simply: Pensacola creates a rather massive burden for the great majority of people impacted by this litigation. Orlando lessens any such burden, while creates a negligible impact for the panhandle people needing to travel here (to Orlando), and again, for a hypothetical trial. Moreover, if Mr. Floyd's allegations are accurate, Orlando has a significant interest in policing the negligence of one of its very own doctors, as it also would in absolving him. And indeed the same is true with Dr. Andrews: he regularly travels here on business and speaks here. If he has or has not done as alleged, adjudicating his responsibility here makes plenty of sense for the community.

Indeed, convenience has seemingly little to do with these motions. Defendants' Motions run roughshod over the Plaintiff's presumptively valid choice, seeking the very opposite of what is most convenient. Rather, they prefer a chance to cherry-pick one of comparatively few panhandle judges they surmise will be more likely to give their clients every benefit of the doubt; and they seek to benefit from a venire highly likely to contain dozens of Baptist's own employees. The points here are not simply ones of bias. The Baptist Defendants' status as the largest private employers in their region (*see id.*) matters for another reason; as does Dr. Andrews's similar status as his hospital-system's true icon and one of that region's most beloved, wealthy, and powerful figures. The point is that Defendants' stunning home-court advantage would guarantee a practical nightmare: a matter of this magnitude—which received international press coverage the day suit was filed—that pits the ultimate panhandle insiders (Baptist and Andrews) against a minority northerner (Mr. Floyd), promises to clog judicial resources if the parties ever needed to pick a fair

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jury; one might need 1000 jurors; there will be 30 preemptory challenges alone. Mr. Floyd's choice of Orlando might represent the only place where could even try this case at all in Florida.

C. The Affidavits Fail to Show How Orlando is *Substantially Inconvenient*

Leaving aside that the complaining parties include a purportedly inconvenienced doctor *residing in Orlando*, Dr. Andrews himself (who travels nationally to the point where he owns a private jet for this purpose), and corporations with tens of millions of dollars in *cash on hand* (who would not be subjected to travel whatsoever, until and unless trial took place, and who do not even invoke the "undue expense" prong of this analysis at all), Defendants' affidavits affirmatively show merely and only that they don't like the Plaintiff's choice. And this is not the test. The test is satisfied through an evidentiary burden: showing how Orlando imposes material hardship upon parties and material witnesses that the panhandle would not. At a minimum, their take-a-run-at-it style affidavits do not meaningfully advance this cause. At worse, these omit the material witnesses residing all over the nation for self-serving purposes. We now explore each affidavit in turn:

1. Andrews Institute Ambulatory Surgery Center, LLC (ASC) Submitted No Affidavit And Its Flawed Analysis Depends on Self-Serving Conclusions

Defendant ASC concedes that venue lies in Orlando; and it offers no evidence at all to support its request to move the case. It literally relies entirely on bald supposition about the panhandle counties' nexus to the case. Although ASC surmises it "stands to reason" that relevant documents and witnesses are in the panhandle, Plaintiff's opposition and Plaintiff's supporting affidavit demonstrate there to be at least as many elsewhere. Moreover, ASC in no way explains any inconvenience that would be exotic to Orlando and would not arise identically in the panhandle. Orlando simply offers no strategic benefit to the Defendants as a place to try this case.

2. Dr. Warrell

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Defendant Dr. Warrell practices in Orlando and lives right here, too. Clearly it would be a stretch for him to suggest under oath that Orlando posed a substantial inconvenience; so he doesn't, under oath. Yet he backdoors exactly this argument through counsel. His affidavit remains bare—completely so—when it comes to his explaining how Orlando presents a *substantial inconvenience* when compared to Pensacola. He merely affirms his “support [for] transfer of the case to Santa Rosa County.” *Warrell Aff.* at 1. That has nothing to do with his burden. Furthermore, notwithstanding his not-so subtle suggestion that he merely “scrubbed in”, **Dr. Warrell himself is the surgeon who signed and dictated a report describing his own surgical procedure that the Plaintiff alleges to have been negligent.**

3. Dr. Andrews

Defendant Dr. Andrews offers little more. His affidavit states that “due to [his] practice and [his] surgery schedule, it would be inconvenient and a burden ... to have Mr. Floyd's case ... tried Orange County.” *Andrews' Aff.* at 1. But he fails to explain how an Orlando trial would create significant added burden when compared with the panhandle. Any trial would place identical restrictions on Dr. Andrews's time and mobility. But he would not miss any additional time from his practice (in Orlando as opposed to Pensacola.) Finally, in a somewhat surprising turn of events, Dr. Andrews attempts to minimize the role of the Defendant surgical fellows (Warrell and Hendwai) in this case. The problem with this is their own operative report (*see Ex. “A” to Sohn Affid.*): Dr. Warrell dictated it; he signed it; and in it, he clearly attests in this medical record to things that—most neutrally stated—call the affidavit's level of spin into question.

4. Dr. Hendawi

Defendant Dr. Hendawi, too, merely states that it “would be more convenient” for him to defend the case in the panhandle. But he, too, fails to tell the Court *why* it would be worse than an

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identical burden for him to travel to Orlando from Dallas/Ft. Worth in the event of a hypothetical trial as opposed to Pensacola. Common sense suggests that Orlando would be far easier.

5. *Dr. Hickman and Paradigm Anesthesia, P.A.*

Defendant Dr. Hickman's affidavit affirms that "due to the nature of [his] practice, it would be both inconvenient and a burden on me [for this case to be tried in Orlando.]" *Hickman Aff.*, at 1. He further purports to argue—without a factual basis—that "almost all of the witnesses in the case would be from Santa Rosa and/or Escambia Counties." As we have pointed out, this assertion falls very flat. And his affidavit does not contest (and could not) that he would be deposed away from his practice, or that he would miss materially more practice-time from an Orlando trial.

6. *Baptist Hospital, Inc. (BHI); Baptist Physician Group, LLC (BPG); and Baptist Health Care Corp. (BHCC)*

The following representatives have supplied factually identical affidavits, purportedly demonstrating Orlando to pose a substantial hardship: Scott Raynes, on behalf of Defendant Baptist Hospital, Inc.; Julie Cardwell on behalf of Defendant BPG; and Mark Faulkner, on behalf of Defendant BHCC. Through each affidavit, the representatives affirm essentially two things: (1) that their own witnesses and documents are located in the panhandle; and (2) that they would need to travel to Orlando, which purportedly creates an "*undue* hardship." *See* Defs' Notice of Filing Affidavits at 10-15. Point one is undoubtedly true but beside the point. Yet again, what evidence permits the Court's conclusion that either fact creates a *substantial* inconvenience specifically because of an Orlando trial? What is substantial cannot be considered in a vacuum. That is, asking corporate hospital representatives to fly 40 minutes does not equate to making a small-business owner shut down his shop to defend a case far away that he could defend locally.

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D. Motions to Transfer for *Forum Non-Conveniens* Require Defendants To Prove That Plaintiff's Presumptively Correct Choice of Forum Presents a Substantial Inconvenience To The Witnesses and Parties.

As we demonstrate, Orlando presents an entirely appropriate venue for this case. The law provides for venue here. The Plaintiff prefers it. And in the event this case proceeded all the way to trial, Orlando would be significantly more convenient for the majority of parties and witnesses. Defendants have not carried their significant burden of demonstrating any “substantial inconvenience” posed by venue in Orlando, and so, their Motions should be denied.

ARGUMENT

1. Plaintiff filed his lawsuit in an authorized and appropriate venue. It should not be transferred simply on account of Defendants' preference to go elsewhere.

2. To begin with, Defendants do not, because they cannot, seek to dismiss for *improper* venue under Florida Rule of Civil Procedure 1.140(b). In fact, there is nothing improper about Orange County. One of the physician defendants in the case lives and practices here. Accordingly, Defendants have moved only under Section 47.122, Florida Statutes.

3. Under Section 47.122, transfer of venue is justified, “[f]or the convenience of parties or witnesses or in the interest of justice.” Fla. Stat. § 47.122.

4. In considering a motion under this statute, the trial Court accepts that “plaintiff’s forum selection is presumptively correct. The burden is on the defendant to establish before the trial court that either substantial inconvenience or undue expense requires a change for the convenience of the parties or witnesses.”² *Safety Nat’l Cas. Corp. v. Fla. Mun. Ins. Trust*, 818 So.

² Tellingly, Defendants do not even attempt to invoke the “undue expense” prong of this test. These are exceedingly wealthy individuals and large corporations, with the possible exception of the two younger doctors who live outside the Florida panhandle: Drs. Warrell and Hendawi. In fact, the central figure in all of this maintains a private jet because he travels so much. This is hardly a case where travel expenses to Orlando create a burden.

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2d 612, 613 (Fla. 5th DCA 2002) (affirming denial of transfer.) Where venue is proper in more than one county, a plaintiff's choice of venue will not be set aside without a showing of substantial inconvenience to the parties or witnesses, or that justice requires transfer. *AHG Tax Credit Fund XVIII, LLC v. Blitchton Station, Ltd.*, 200 So. 3d 117 (Fla. 5th DCA 2016). This is not to be lightly set aside.

5. Where venue is proper in more than one county, the choice of forum rests with the plaintiff. *Hall v. Animals.com, LLC*, 171 So.3d 216 (Fla. 5th DCA 2015); *accord Marques*; *accord R.J. Reynolds Tobacco Co. v. Mooney*, 147 So. 3d 42 (Fla. 3d DCA 2014).

6. Indeed, it is in fact “improper” to transfer an action solely because venue is appropriate there as well. *Resor v. Welling*, 44 So. 3d 656 (Fla. 5th DCA 2010). In such situations, a plaintiff is “entitled” to choose the venue. *A-Ryan Staffing Solutions Inc. v. Ace Staffing Management Unlimited, Inc.*, 917 So. 2d 1000 (Fla. 5th DCA 2005). Exactly the point here.

7. It is incumbent on the party (or parties) seeking transfer of venue to submit affidavits or other evidence that will shed necessary light on the issue of the convenience of the parties and witnesses and the interest of justice. *Marques v. Garcia*, 2018 WL 1832320 (Fla. 3d DCA 2018); *accord Hall v. Animals.com, LLC*, 171 So.3d 216 (Fla. 5th DCA 2015). In fact, “when a *forum non conveniens* challenge is raised, it is incumbent upon the parties to submit evidence or affidavits or other evidence that will shed necessary light on the issue of convenience of the parties and witnesses and the interests of justice.” *See Eggers v. Eggers*, 776 So. 2d 1096, 1098 (Fla. 5th DCA 2001.) In two instances (ASC and Warrell) this has failed to happen altogether. In the remaining instances, the affidavits merely echo the hollow conclusions of the attorney-argument without accounting for the fact that each venue represents added convenience for different parties. And, “[i]f a Defendant as here, fails in that showing, ***the plaintiff's choice of forum controls.***”

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Houchins v. Florida E. Coast Ry. Co., 388 So. 2d 1287, 1291 (Fla. 3d DCA 1980) (*emphasis added.*)

8. As stated, several parties seeking transfer have opted out of this requirement. The ASC Defendant cites dubious case law suggesting that the face of the complaint can support transfer under Fla. Stat. § 47.122. Affording Defendant ASC the benefit of the authorities it has cited, *which is highly questionable upon reading them*, these circumstances in this case absolutely suggest that one needed an affidavit. ASC's self-serving reading of the Complaint is not enough to permit the Court to conclude, *here*—particularly where we rather easily have demonstrated ASC to have told at most half of the story—that Orlando creates substantial inconvenience, merely because most documents and witnesses *might be located* in another county.

9. ***Convenience of the parties:*** as we have described above, this action involves parties not just from two counties, but from four states (Pennsylvania, Florida, Texas, and Alabama.) And it involves witnesses from many more. Mr. Floyd has chosen Orange County because Dr. Warrell—who acknowledged micro-fracturing him in an operative report—resides here. Furthermore, Orange County is far easier to travel into—for most everyone—than would be either panhandle county. *See Sohn Aff.*

10. Defendants are scattered across state and county lines. No matter where a trial occurred—if one ever did—each Defendants' deposition will be taken in that appropriate county (and state), pursuant to the Florida Rules of Civil Procedure. *See* R. 1.410(e)(2). The only question would be related to a trial.

11. A minority-handful of affiants (the defendant corporations) have lamented about travel in the event of such a trial. Statistically, there is a probability of somewhere between .2%

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and .4% that this would ever occur. (See Ex. C, Florida Office of the State Courts Administrator Statistics, 2016-17, at 4-24, *available at*:

https://www.flcourts.org/content/download/218343/1976004/Chapter-4_Circuit-Civil.pdf).

12. More importantly, none of these complaining affiants have explained what would be exotic to an Orlando trial venue (as opposed to a Pensacola one) that would present a *substantial* inconvenience. That is, any trial would create some modicum of inconvenience. The question is necessarily *whether and how Orlando would make things worse*. The Court has received literally zero evidence of this being the case. It has learned only that no one wants to travel here—apparently even those who live here. But construing mere intrastate travel (for *some* parties) as constituting a substantial inconvenience would militate in favor of transfer in every instance such a motion like this were filed. It would swallow up the entire rule. Indeed, wherever a trial would take place, all attendees would be taken out of their work/practice and home schedules.

13. ***Convenience of Witnesses***: Defendants also argue that convenience of witnesses militates in favor of transfer. This is at best highly speculative on their part and is at worse untrue. Indeed, discovery is just beginning. Nevertheless, Plaintiffs have actually taken the trouble of identifying a significant swath of key witnesses in this unusual case. *See Sohn Aff.* It is hard to fathom how Defendants—who know all of this information—do not intend on taking discovery from close to every witness on this list. Almost none of those witnesses listed reside in the panhandle counties. Yet almost all of them have probative information on issues of damages, causation, and liability for a medical malpractice action of this terrific magnitude.

WHEREFORE Plaintiff respectfully asks this Court to enter an Order denying Defendants' Motions and granting Plaintiff any and all further relief deemed necessary.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed via the Florida Courts E-Filing Portal and provided to the members of the service list.

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GENERAL JURISDICTION DIVISION

CASE NO.: 2018-CA-012128-O

SHARRIF K. FLOYD

Plaintiff,

vs.

DR. JAMES ANDREWS, M.D.; DR. GREGORY
HICKMAN, M.D.; DR. CHRISTOPHER WARRELL,
M.D.; DR. TARIQ HENDAWI, M.D.; THE ANDREWS
INSTITUTE AMBULATORY SURGERY CENTER,
LLC; PARADIGM ANESTHESIA, P.A.; BAPTIST
HOSPITAL, INC.; BAPTIST HEALTH CARE
CORPORATION; GULF BREEZE HOSPITAL, INC.,
BAPTIST HOSPITAL, INC. d/b/a GULF BREEZE
HOSPITAL; AND BAPTIST PHYSICIAN GROUP, LLC,

Defendants.

**AFFIDAVIT OF BRADFORD ROTHWELL SOHN IN SUPPORT OF
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS
TO TRANSFER ON *FORUM NON CONVENIENS* GROUNDS**

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

Before me, the undersigned authority, personally appeared MR. BRADFORD R. SOHN,
who, after being duly sworn, deposes and says:

1. I am an attorney-at-law of the state of Florida, Florida Bar No. 98788 and sole
shareholder in and for The Brad Sohn Law Firm, PLLC, with offices at 2600 S. Douglas Road,
Suite 1007, Miami, Florida 33134, (786) 708-9750. In this capacity, I am lead counsel for the
Plaintiff in the above-entitled action, Mr. Sharif K. Floyd.

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2. I am competent to make this affidavit and have personal knowledge of the facts set forth herein.

3. Furthermore, as the individual who drafted and researched the Civil Complaint filed in this above-styled action, my reference to certain facts and allegations from the complaint in the Opposition Memorandum is based on the knowledge, information, and belief that I used in drafting the complaint. This includes having reviewed all available medical records for my client and having reviewed all provided pre-suit discovery.

4. Sharrif K. Floyd, the Plaintiff, prefers to litigate in the 9th Judicial Circuit Court of Florida, in and for Orange County, Florida.

5. Mr. Floyd, who resides in Philadelphia, Pennsylvania, will be most inconvenienced by this choice.

6. Mr. Floyd also believes that Dr. Warrell, a resident of and practitioner in Orlando, Florida, is a critical defendant in his action. That is, he disagrees with the implication that Dr. Warrell is some sort of nominal defendant. *See also* ¶ 20. Indeed, Dr. Warrell himself dictated and signed an operative report (attached as Exhibit “A”) in which he discussed the surgery that *he* performed. *See id.*

7. At this point, discovery has only just commenced. Nevertheless, I have performed significant research into this matter before instituting suit, as required by Florida law. This has necessarily involved significant pre-suit investigation and informal discovery involving the named defendants, as well as numerous non-parties.

8. The result of my efforts detailed in Paragraph 7 has led me to identify, with a reasonable degree of confidence, the following non-exhaustive list of persons with knowledge:

- a. Minnesota Witnesses (21): Dr. Chris Larson, MD, Vikings Medical Staff; Dr. Greg Lervick, MD, Vikings Medical Staff; Eric Sugarman, ATC, Vikings Medical Staff;

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- Thomas Hunkele, ATC, Vikings Medical Staff; Robert Roche, ATC, Vikings Medical Staff; Dave Jantzi, ATC, Vikings Medical Staff; Kevin Warren, COO Vikings; Rick Spielman, GM Vikings; Rob Brzezinski, VP Football Ops. Vikings; Lester Bagley, VP Communications, Vikings; Mike Zimmer, Vikings Head Coach; Chaz Mahle, Vikings Asst. Strength Coach; Mark Uyeyama, Vikings Strength Coach; Andre Patterson, Vikings Defensive Line Coach; Linval Joseph, Vikings Player; Xavier Rhodes, Vikings Player; Adrian Peterson, former Vikings Player (now Redskins); Maja Tippman-Piekert, MD (Neurology, Mayo – Minnesota); Robert J. Spinner, MD – (Neurology, Mayo – Minnesota); Robert Cooper, MD (Minnesota; Sports Med); Hollis Fritz, MD (Radiologist MRI knee; Mayo - Minnesota); Praful Kelkar, MD (EMG Mayo – Minnesota);
- b. Florida Witnesses (11): Defendant Dr. Chris Warrell, MD (Orlando, FL); Defendant Dr. Greg Hickman, individually and corporate representation obo Paradigm Anesthesia, P.A. (Gulfbreeze, FL); Corporate Representative Scott Raynes, obo Defendant BHI (Pensacola, FL); Corporate Representative Julie Cardwell, obo Defendant BPG (Pensacola, FL); Corporate Representative Mr. Mark Faulkner obo Defendant BHCC (Pensacola, FL); and Corporate Representative obo Defendant ASC (Pensacola, FL); Mr. Sharrif Tabbah, ATC (Miami Beach, FL); Brent Salazar (Fmr Vikings Strength Coach, now USTA, Orlando area); Brooke Adamson, nurse (Gulf breeze, FL); Brandon Winchester, MD (Gulf Breeze, FL);
 - c. Pennsylvania Witnesses (2): Sharrif K. Floyd (Plaintiff); Mr. Kevin Lahn (parent - Mr. Floyd);
 - d. Colorado Witnesses (2): Matthew Provencher, MD (Steadman, Ortho); Robert LaPrade, MD (Steadman, Ortho);
 - e. New York Witnesses (5): Erin Manning, MD (HSS, NY - EMG); Vladimir Kramskiy, MD (HSS, NY – EMG); Frank Cordasco, MD (HSS, NY – Ortho); Brian Mackler New York, NY (agent); Jon Perzley New York, NY (agent);
 - f. Georgia Witnesses (2): Dan Quinn Falcons (college position coach); Bryant Young Falcons (college position coach);
 - g. Alabama Witnesses (1): Defendant Dr. James Andrews MD (Birmingham, AB);
 - h. Texas Witnesses (1): Defendant Dr. Tariq Hendawi (Irving, TX);
 - i. Arizona Witnesses (1): Sam Bradford Cardinals player (former Viking)
 - j. Massachusetts witnesses (1): Brendan Daley DL Former Vikings Position Coach (Patriots)
 - k. Ohio Witnesses (1): Urban Meyer, Ohio (college coach at UF);
 - l. South Carolina Witnesses (1): Will Muschamp, S. Carolina (former college coach at UF); and
 - m. Iowa Witnesses (1): Dan McCarney, Iowa (college position coach).

9. From within the more general list of persons with knowledge presented in Paragraph 5(a), I have significant confidence that there are more than 30 material witnesses, inclusive of the at-least four out-of-state parties, who all reside beyond the boundaries of Santa

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Rosa and/or Escambia Counties. Indeed, nearly all the names on the list in Paragraph 5(a) are out-of-state witnesses and parties.

10. Orlando, Florida's Orlando International Airport is the busiest airport in the state of Florida and the eleventh-busiest in the United States.¹ Orlando also have an expansive travel infrastructure with numerous hotel options and other accommodations that make travel exceptionally convenient compared to almost any other location in Florida.

11. By comparison, Pensacola's Airport sees only 78 arrivals and departures per day; it is significantly smaller and more difficult, and usually more costly to fly in and out of. *See Pensacola International Airport Fact Sheet*, Exhibit B.²

12. Orange County will be—by far—the most convenient forum for majority of the parties to this action.

13. Orange County will be—by far—the most convenient forum for the overwhelming majority of witnesses likely to be called in this case. (Including at least one of the complaining parties.)

14. All pre-suit affiants—e.g., those on both sides—reside out of state, respectively in: California; Tennessee; and North Carolina. None of these states offer frequent direct flights into the Panhandle; by contrast Orlando has direct flights to major cities in all these states and at far less cost.

15. Lead counsel for Plaintiff's office is in Coral Gables, Florida. It would be unquestionably easier to travel to Orlando than it would be for us to travel to the panhandle.

¹ See https://en.wikipedia.org/wiki/Orlando_International_Airport.

² Available at:
https://assets.convergeapp.net/ClientSite/6637/Resources/AboutAirport/new_assets/Airport%20Fact%20Sheet2018.pdf

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16. Two of the three counsel for Defendants practice out of offices located in Tallahassee, Florida. Only one member of the defense counsel practices in Pensacola. There are no non-stop flights to Pensacola from Tallahassee. The drive from Tallahassee to Orlando is equidistant to the drive from Tallahassee to Pensacola. Moreover, there *are* flights—indeed many of them—that would allow counsel to fly from Tallahassee to Orlando. And, of course, those flights would actually save time and money for counsel and their clients; they would create added convenience.

17. Overall, a trial in Pensacola would tax far more resources from far more parties and witnesses than would a trial in Orange County.

18. Indeed, as I mention within our opposition briefing, were this case to be tried in Orlando (in the Ninth Judicial Circuit In and For Orange County), recent statistics suggest there to be a .4% likelihood of its ever being tried. *See Circuit Civil Trial Jury Rates 2016-17* (Fla. Office of the State Courts Administrator).

19. Indeed, as I alluded to within our opposition briefing, were this case to be tried in the panhandle region (in the First Judicial Circuit), recent statistics suggest there to be a .2% likelihood of its ever being tried. *See Circuit Civil Trial Jury Rates 2016-17* (Fla. Office of the State Courts Administrator).

20. Finally, attached hereto as Exhibit “A” is a true and correct copy of the operative report for Mr. Floyd’s right knee surgery that has been produced to me multiple times in the course of the pre-suit investigation. This operative report very clearly is signed and dictated, *not* by Dr. Andrews, but instead by Dr. Warrell. Dr. Warrell specifically acknowledges his own role in this surgery through his use of the phrase “we.” That is, he notes that “we” addressed cartilage damage by using a round arthroscopic burr and that “*we* noted a good bleeding base ...” *See id.*, at 2

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(*emphasis added.*) This rather dramatically undercuts the underlying implication from the Defendant-orthopedists' affidavits, *e.g.*, that this is *really* a case involving Dr. Andrews and that Drs. Warrell and Hendawi represent some sort of collateral damage/nominal Defendants.

FURTHER AFFIANT SAYETH NAUGHT.



STATE OF FLORIDA)
) SS
MIAMI-DADE COUNTY)

Before me, the undersigned authority personally appeared Bradford R. Sohn who after being duly cautioned and sworn according to law, deposes and states that he/she has read the above and that he/she has set his or her hand and seal thereto for the purposes therein expressed.

The foregoing is acknowledged before me this ^{25th}~~23rd~~ day of January, 2019, by Bradford R. Sohn, who is:

PERSONALLY KNOWN BY ME [X]
WHO HAS PRODUCED THE FOLLOWING IDENTIFICATION
WHO DID TAKE AN OATH
WHO DID NOT TAKE AN OATH



Printed Name Eric Bird

My Commission Expires:
Notary Public
State of Florida at Large
Notary I.D. No. _____

(Notary Seal)



Eric Bird
Commission # GG144236
Expires: October 23, 2021
Bonded thru Aaron Notary

"A"

ANDREWS INSTITUTE SURGERY CENTER

OPERATIVE REPORT

PATIENT: Sharrif K. Floyd
MR#: 55292
DATE OF BIRTH: 5/28/1991
DATE OF OPERATION: 9/22/2016
DICTATED BY: Christopher S. Warrell, M.D.

PREOPERATIVE DIAGNOSIS: 1. Right knee lateral meniscus tear.
2. Right knee lateral femoral condyle chondromalacia.
3. Right knee patellar chondromalacia.

POSTOPERATIVE DIAGNOSIS: 1. Right knee lateral meniscus tear.
2. Right knee lateral femoral condyle chondromalacia of grade IV.
3. Right knee patellar chondromalacia of grade II.
4. Right knee lateral tibial plateau chondromalacia of grade II.

PROCEDURE: 1. Right knee partial lateral meniscectomy.
2. Right knee lateral femoral condyle chondroplasty.
3. Right knee patellar chondroplasty.
4. Right knee lateral tibial plateau chondroplasty.
5. Right knee intra-articular injection of bone marrow aspirate, platelet-rich plasma and hyaluronic acid.

SURGEON: James R. Andrews, M.D.

ASSISTANTS: Christopher S. Warrell, M.D.
Tariq K. Hendawi, M.D.

(Qualified assistants were required for patient transport, positioning and wound closure).

ANESTHESIA: General LMA.

TOURNIQUET/TOURNIQUET TIME: Proximal right thigh, 300 mmHg for approximately 60 minutes.

ESTIMATED BLOOD LOSS: Minimal.

SPECIMENS: None.

COMPLICATIONS: None.

IMPLANTS: None.

SCANNED

ARTHROSCOPIC FINDINGS: The patient was found to have a complex tear of the lateral meniscus involving the posterior horn and body. The patient also had a full-thickness cartilage lesion on the lateral femoral condyle. This was a circular lesion measuring approximately 7 mm in diameter. The patient also had some grade II chondromalacia involving the patella, as well as grade II chondromalacia involving the lateral tibial plateau. The cartilage surfaces of the trochlea and the medial femoral condyle appeared healthy and intact. The medial meniscus appeared intact as well. The cruciate ligaments were intact.

INDICATIONS FOR PROCEDURE: The patient is a 25-year-old professional football player for the Minnesota Vikings. The patient states that he twisted his knee in preseason camp. He had a tearing sensation with immediate pain in the posterior and lateral knee. This was associated with throwing as well as some mechanical symptoms. He attempted to rest his knee and returned to play. However, upon participating in the preseason game, he again twisted his knee and had similar symptoms. He subsequently had an MRI, which showed a lateral meniscus tear as well as chondral injuries involving the lateral femoral condyle and patella. The patient was subsequently referred to Dr. Andrews for further evaluation and treatment. Based upon his physical exam, as well as the history and imaging findings as noted above, we recommend the patient undergo right knee arthroscopy with partial lateral meniscectomy versus repair, chondroplasty of the lateral femoral condyle and patella, an intra-articular injection of bone marrow aspirate, PRP, hyaluronic acid and all indicated procedures. The risks, benefits and alternatives of surgery were discussed with the patient. The risks discussed included but were not limited to risk of infection, injury to nerves and/or blood vessels, need for additional surgery in the future and risks associated with anesthesia. The patient expressed understanding of the above and agreed to proceed with surgery.

DESCRIPTION OF PROCEDURE: The patient was first identified in the preoperative holding area. The correct surgical site was confirmed and marked. The patient was taken to the operating room and placed supine on the operating table.

The patient first underwent bone marrow aspirate harvest with Dr. Hackel. For description of this procedure, please see Dr. Hackel's operative report.

Following the harvest of the bone marrow aspirate, the patient was placed supine on the operating table. All bony prominences were well padded. Excellent general anesthesia was induced. The patient received appropriate preoperative antibiotics. A well-padded tourniquet was placed to the proximal right thigh and the right lower extremity was prepped and draped in a standard sterile fashion. A surgical time-out was performed, at which point every body in the room confirmed the correct patient, surgical site and surgical procedure.

At the conclusion of our time-out, an Esmarch was used to exsanguinate the right lower extremity and the tourniquet was inflated to 300 mmHg.

We began our arthroscopy by creating the standard anterolateral and anteromedial portals. On diagnostic arthroscopy, we noted a complex

tear of the lateral meniscus. This was located at the posterior horn and body of the lateral meniscus. We also noted full-thickness grade IV cartilage injury on the lateral femoral condyle as well as grade II chondromalacia involving the patella and lateral tibial plateau. Investigation of the medial compartment revealed that the articular surfaces were intact and the medial meniscus appeared intact without any significant tearing. The arthroscope was also directed through the notch to the posterior knee, where the posterior horn of the medial meniscus as well as the attachments to the posterior capsule were investigated and found to be intact. The cruciate ligaments were also intact. The trochlea had no significant chondromalacia.

With our diagnostic arthroscopy complete, we began our partial lateral meniscectomy. This was performed with the arthroscopic shaver as well as the arthroscopic ablator. The torn meniscus was removed and a stable edge was created.

Next, we directed our attention to the patellar chondromalacia. This was gently shaved with the use of the arthroscopic shaver.

Finally, we addressed the cartilage damage in the lateral compartment. A minimal chondroplasty was performed on the lateral tibial plateau, where there were some grade II and perhaps even some grade III changes. The lateral femoral condyle was then addressed with the use of the arthroscopic shaver as well as a small round arthroscopic burr. It should be noted that the lateral femoral condyle lesion was circular in shape and measured approximately 7 mm in diameter. It was a full-thickness injury. Following débridement, we noted a good bleeding base in the lesion and there were no unstable chondral flaps.

The knee was then thoroughly irrigated with sterile normal saline and a 10-French Hemovac was placed superolateral to the patella. The anteromedial and anterolateral portals were then closed with 3-0 nylon. The Hemovac was closed and the suction turned off, and we placed our intra-articular injections of PRP, bone marrow aspirate and hyaluronic acid. The patient tolerated the procedure well. There were no complications. He was transferred to the PACU in stable condition.

At the end of the procedure, all counts were correct.

POSTOPERATIVE PLAN: The patient will be initially touchdown weightbearing to the right lower extremity. We anticipated him getting back to football activity in approximately four to six weeks. He will be discharged from the PACU today once this pain is controlled. He will follow up in the morning in the Physical Therapy Department where he will be evaluated and his Hemovac suction will be turned on. The patient will follow the standard postmeniscectomy rehab protocol.

Christopher S. Warrell, M.D.


James R. Andrews, M.D.

JRA/CSW/ASFD/rha
DD: 9/22/2016
DT: 9/23/2016

OP REPORT - PAGE 4
Sharif K. Floyd
9/22/2016

***** Document e-signed by Dr. Christopher S. Warrell, M.D. on Monday,
September 26, 2016 at 8:27 AM *****

"B"



Airport Fact Sheet

General Information

Official Airport Name: Pensacola International Airport

Code: (PNS)

Owner/Operator: City of Pensacola

Location: PNS is located in Escambia County, approximately three miles northeast of the central business district of the City of Pensacola. Escambia County is located on the Gulf of Mexico in the extreme western portion of the Florida Panhandle and borders the State of Alabama on the west and north. On the east, Escambia County is bordered by Santa Rosa County, Florida. Pensacola is Central Time Zone.

Elevation: 121'

Acreage Size: 1,400 acres

Contact: Mr. Greg Donovan, Airport Director, 2430 Airport Blvd., Suite 225, Pensacola, FL 32514, (850) 436-5000, fax: (850) 436-5006

E-Mail: info@flypensacola.com

Web Site: www.flypensacola.com

ARFF Index: Index C Equipment

Passenger Terminal

Two-Story Terminal 159,000 square feet
Two-Story Concourse 10 gates, 10 New
Loading Bridges

Parking Garage with Skyway with 963 available spaces
Main Surface Lot totaling 830 available spaces
Shuttle Parking Lot totaling 538 available spaces

Air Traffic

Total Number of Airlines

5 including commercial and regional airlines

Number of Commercial Airlines

2 – AirTran Airways and Delta Air Lines

Number of Regional Airlines

4 – American Eagle, United and US Airways

Total Daily Arrivals and Departures

74

Total Seat Capacity

5286 daily seat capacity



Passenger Statistics:

General passenger statistics	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Average Number of Passengers per Day	3,043	2,958	2,885	3,515
Total Passengers per Year	1,110,696	1,079,885	1,053,376	1,281,615
Percentage Change from the previous year	-3.96%	-2.77%	-2.45%	21.6%
General passenger statistics	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Average Number of Passengers per Day	3,699	4,050	4,376	4,430
Total Passenger per Year	1,350,303	1,478,606	1,597,502	1,617,247
Percentage Change from the previous year	5.33%	10.14%	8.04%	1.24%
General passenger statistics	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Average Number of Passengers per Day	4,549	4,453	3,831	3,944
Total Passenger per Year	1,660,545	1,625,603	1,398,502	1,439,746
Percentage Change from the previous year	2.68%	-2.10%	-13.97%	2.95%
General passenger statistics	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Average Number of Passengers per Day	4278	4150		
Total Passengers per Year	1,561,540	1,514,998		
Percentage Change from the previous year	8.46%	-2.98%		

Top Six Passenger Airlines by Market Share FY 2012: AirTran (14%), American Eagle (16%)
 Continental Express (4%), Delta Air Lines/Delta
 Connection (45%), United Airlines (11%), US
 Airways Express (10%)

Runway Information:

Item	Runway 17 – 35		Runway 8 - 26	
Runway Bearing	R17 - 166 magnetic, 167 true R35 – 346 magnetic, 347 true		R8 – 077 magnetic, 078 true R26 – 257 magnetic, 258 true	
Runway Length & Width	7,004' / 150'		7,000' / 150'	
Pavement Type	Concrete		Asphalt	
Pavement Strength Single Wheel	85,000 LB		85,000 LB	
Pavement Strength Dual Wheel	150,000 LB		150,000 LB	
Pavement Strength Dual Tandem	270,000 LB		270,000 LB	
Markings	Precision		Non-Precision	
Runway Lighting	HRL		HRL	
Runway Threshold	17	35	8	26
End Elevation (WSL)	121.3'	103.4'	97.2'	113.5'
End Coordinates Latitude	30 28' 58.47"	30 27' 50.93"	30 28' 16.80"	30 28' 31.28"
End Coordinates Longitude	87 11' 26.37"	87 11' 08.34"	87 11' 45.38"	87 10' 27.11"
Runway Threshold	17	35	8	26
Approach Slope	50:1	34:1	34:1	34:1
Blast Pad	200'x200'	200'x200'	200'x200'	200'x200'
Nav aids	ILS, NDB, GPS	NDB, GPS	VOR, GPS	LOC/DME, GPS
Visual Aids	PAPI	REIL, PAPI	REIL, PAPI	REIL, PAPI
Approach Lighting	MALSR	None	None	None
Approach Visibility Minimums Ceiling-FT/Visability-Mi	200 – ½	400 – 1	700 – 1	300-1

Airport Remarks:

Attended continuously. Fixed wing VFR departures proceed to airport boundary before turning unless otherwise directed by ATC. Runway 8 is preferred departure runway. Turbojet powered aircraft with a maximum certified takeoff weight over 75,000 lbs should execute the standard noise abatement departure profile for all departures in accordance with FAA AC 91-53.

Helicopter landing must contact Heliworks at 850-438-6056 prior to parking. Helicopter parking is available at Heliworks, contact Pensacola Aviation Center for fueling.

Runway 8 has 5' radar reflector 1651' from threshold. Prior permission required 24 hrs for unscheduled air carrier ops with more than 30 passenger seats or for unscheduled aircraft greater than 65,000 GWT, call 850-436-5000. Weights for Taxiway C, single gear 60,000 lbs, dual gear 80,000 lbs and dual tandem gear 150,000 lbs per airport manager. WHEN ATCT CLSD, ACTIVATE HIRL RY 17/35 & HIRL RY 08/26, MALSR RY 17 – CTAF. PAPI RY 08/26 & RY 35, ON CONTINUOUS.

Weather Data

Sources: ASOS

(850) 436-4799.

LAWRS. LLWAS.

Unmonitored 0500-1100Z.

Communications:

CTAF 119.9 ATIS

121.25 UNICOM

122.95

